

MOSLEM IDEAS OF JUSTICE APPEALING TO FOREIGNERS

Strong Reasons Why the United States and Other Nations Should Not Consent to the Attempted Abrogation of the Capitulations

By F. C. LITTLE-OWEN.

PRESIDENT WILSON and his Administration are to be congratulated on the stand which they have taken in declining to acquiesce in the attempt of the Ottoman Government to abrogate the capitulations, and the message cabled by the State Department on Wednesday last to Ambassador Morgenthau for communication to the Sublime Porte leaves nothing to be desired in the way of energetic protest.

Neither the United States nor any other foreign Power the civilization of whose people is based on Christianity can dream of permitting those of its citizens who have interests in Turkey or who for one reason or another are called upon to reside permanently or temporarily in the dominions of the Sultan to be subject to the jurisdiction of courts whose administration of justice is based entirely on the teachings of the Koran. The methods of Moslem justice are so entirely oriental both in their conception and in the execution, and Moslem ideas of the punishment of what is considered in the light of crime are so altogether appalling that any foreign Government which abandoned its subjects in Moslem countries to the tender mercies of the native authorities would be unworthy of its trust.

Before proceeding to discuss and explain the capitulations it may be asked why the Sublime Porte has taken this country in the way of a return for the surrender of the valuable treaty rights enjoyed under its provisions by the United States, Turkey, which has on two or three occasions approached the Government at Washington on the subject without going to the length of its recent message, has intimated that concessions in the matter would be followed by advances to American financial, commercial and manufacturing interests in Turkey. But the Sultan is known to have held out similar inducements and with the same object in view to the other great Powers, and this being the case it has been taken at Washington where the advantage of the United States over the other nations would come in.

Moreover, committed as is the Porte to the expenditure of immense sums of money upon its army and its navy, overburdened as it is with native and foreign debt, and with the most acute forms of financial distress, it naturally follows that it will be driven in the near future to impose far heavier duties on American and other foreign interests in Turkey than those which now exist, since native sources or revenue are virtually exhausted by the present altogether intolerable burden of taxation. Indeed, new imposts on foreign interests are about all that is left from which the Ottoman treasury can hope to derive any additional income.

The Sublime Porte has, therefore, nothing of any real value to offer to the United States Government in return for the latter's relinquishment of the rights and prerogatives which it has always enjoyed by virtue of those treaties known as the capitulations. Even if Turkey had anything in the way of a consideration to offer the United States would do well to think twice before making any concessions.

For the present government at Stambul is not established on any too firm a basis. It seems to be altogether at the mercy of such irresponsible and vanity crazed adventurers as Enver Pasha, now Minister of War and virtual dictator, his hands stained with the blood of gallant old Nazim Pasha, who was murdered in the most cowardly manner. There is no guarantee that some popular movement may not at any moment overthrow the regime now in power, repudiate all its arrangements, do away with the Constitution, such as it is, and restore the autocracy of the Pashah in all its medieval and barbarous despotism.

Contrary to what so many believe, the capitulations bestowing ex-territorial rights upon foreigners in Turkey were not extorted from the latter by force, nor against her will. Their origin is a very interesting one and is to be found in the profound contempt of the Moslem for the unbeliever.

Islam cannot conceive a mixed State. It takes account only of a State containing none but Moslems, and its ideal is that the whole world will in the end form such a State. In practice, Moslems try to shut their eyes to the existence of non-Moslems among them. That a non-Moslem should have the same status as a Moslem is something unthinkable to the Moslem believer, and his attitude toward the non-Moslem is one of extreme contempt. What the unbelievers do or think among themselves is a matter of indifference. They are outside the ring fence of Islam.

Moreover, it must be remembered that Islam was spread by means of conquest, rather than by peaceful missionary effort. The Moslem conqueror, realizing that it was up to him to administer the conquered lands, sought help from the methods of administration which he found in operation. Besides the ordinary organization of the State, he found also various ecclesiastical organizations, Christian and Jewish, and to these he gave over the administration of the non-Moslem sections of the community, making their rabbis and bishops their responsible heads, and links of contact with the Moslem rulers.

Following the same methods of leaving contemptuously the unbeliever to settle his affairs for himself, the foreign merchant, living and trading in Turkey, Persia, Egypt and in other Moslem States, was put, first by usage and finally by treaty, under the jurisdiction and control of his own consuls—not as a matter of privilege, but because he was regarded as too despicable to be worthy of the enjoyment of the benefits of Moslem justice, based on the Koran.



Grim justice in Persia—a "living statue" at Shiraz; the column contains a man who was walled up alive for stealing two cucumbers.

It has ended by creating in each Moslem empire or kingdom as many foreign independent States as there are foreigners in the land. As a proof that this is not the result of conquest, it may be pointed out that Switzerland, Portugal, Belgium and even little Denmark enjoy the same ex-territorial rights in Turkey, Persia and Egypt as the United States, Great Britain, France, Russia and Germany.

The consular courts were found by the foreign Powers to work so well in Moslem countries, and to furnish so much protection of life and property to their subjects residing in those Mohammedan States, that the system was extended to all other Oriental nations, and ex-territorial rights and capitulations were obtained, not as a contemptuous free gift, as in the case of Moslem States, but by superior force, from the governments of China, Siam and Japan. In China they have still been retained. But Japan has been successful in securing the consent of the foreign Powers to their abolition.

This concession was made in 1899 to the Mikado's Government. It was because the latter had adopted progressive and enlightened character, and which, elaborated by a commission of the ablest Japanese and foreign jurists, the latter predominating, had received the approval of all of the foreign Powers, who had likewise assured themselves of the reliable character of the judiciary and of the thoroughly up to date police and prison systems. It is only fair to state that during the fifteen years which have elapsed since then the foreign Powers have never had the slightest occasion to regret their consent to the abrogation of the capitulations in the Land of the Rising Sun.

It is quite probable that the Sultan's Ambassador at Washington, who is an Austrian by birth, and who only abjured Christianity last May at Constantinople, may in his zeal as a new convert to Islam insist that Turkey too has an up to date civil and criminal code, elaborated by foreign and Ottoman jurists. That is perfectly true. It is a sort of unworkable blend of the Code Napoleon, and of the Islamic Chariat, and of the Islamic Chariat, and it exists merely for show.

How little importance can be attached thereto is apparent from the admissions of Nedjmeddin Bey, a Minister of Justice of the new regime at Constantinople. In the midst of one of his enthusiastic exordiums concerning the reforms inaugurated by his Government in the administration of laws, in the personnel of the judiciary and in the enforcement of the new code he was interrupted with a question as to whether his project provided for a system of justice, common alike to Moslem, to Christian and to Jews, which would place them on an equal footing and endow them with the same rights in the eyes of the law. He suddenly paused, made no attempt to conceal his horror and distaste at the bare mention of the proposal and finally replied very decidedly and categorically:

"That is an eventuality which it is impossible for a Moslem even to contemplate. The idea would never occur to him."

The entire system of justice in Turkey is religious and is subject not to the Minister of Justice but to the Sheikh-ul-Islam, who is not only the Moslem Primate of the Empire but also its Lord High Chancellor, in this sense, that he is the head of its judiciary, the supreme judge of the land, from whose decision there is no appeal, not even to the throne. Twice a week he presides over the supreme court of justice, or Arzodest, which is attached to his palace at Stambul.

He has absolute control over the imams, mollahs, ulemas and softas, as well as over the superiors of the various orders, or theological colleges, and also over all judicial courts and institutions. All the judges and magistrates of the empire are appointed by him, and how thoroughly they are subjected to religious influences is apparent from the fact that the revenues required for their maintenance are derived from the vakouf, or church lands.

These are enormous in extent. In fact the "Statesman's Year Book," one of the most conservative of standard works of reference, declares that at least three-fourths of the urban property of the Ottoman empire belongs to the vakoufs. It is no exaggeration to assert that it holds most of the freehold in the Sultan's dominions, and is the ground landlord of the vast majority of the population. The leases which it grants have all sorts of oppressive stipulations, among them one to the effect that if a leaseholder dies without a direct heir, a son or daughter, or grandchild, the property reverts ipso facto to the vakouf and cannot be bequeathed to either widow or other relatives.

It is quite out of the question to bring the Moslem interpreters of Islamic law to modernize their application thereof, or to realize that the times have changed since its precepts were devised by the Prophet fourteen centuries ago, in Arabia, to suit the needs of nomadic tribes in a pastoral country. From the Sheikh-ul-Islam at Stambul, and from the Grand Mufti at Cairo, down to the lowest Cadi or Magistrate, it is regarded in the light of a mortal sin, and as wellnigh to swerve from what are understood to be the teachings of the founder of their faith.

How this works out was seen by the refusal in 1910 of the Grand Mufti at Cairo to ratify the capital sentence passed upon Warrant, the assassin of Prime Minister Boutros Pasha, a Coptic Christian, on the ground that ac-

cording to Islamic law a Moslem cannot be put to death for the killing of a Christian. According to the Grand Mufti murder is no crime in the eyes of Islam, when the slayer is a Moslem and his victim an unbeliever. This doctrine, familiar to those who have lived for any length of time in Mohammedan countries independent of foreign control, was a shock to the English authorities at Cairo, who apparently had not been aware thereof and who as soon as they got over their surprise promptly proceeded to have Warrant hanged in defiance of the protests of the Grand Mufti.

Another reason given by that high religious and judicial dignitary for his refusal to sanction the execution was that there is no mention of revolvers in the Koran, or in that Chariat law which is based on the holy writ of Islam—the Chariat dates back to the eighth century—and consequently any Moslem making use of a revolver to wound or murder is guilty of any crime known to the sacred law.

Lord Cromer, in his book "Modern Egypt," relates the difficulty which he experienced when this self-same Grand Mufti advocated as the most natural thing in the world the crucifixion of criminals in delicate dresses, pressing upon him that "although the onward tramp of civilization might be heard but faintly within the sacred precincts of the Mosque, England was nevertheless standing without its walls and would be compelled to enforce a veto on any such act of extreme barbarism."

Lord Cromer goes on to say that while he could not do this he could not do much more. He could not make "the Egyptian horse drink of the waters of civilization, albeit the most limpid stream of social and judicial reform were turned into the trough for him, if the Grand Mufti condemned the act of drinking as impious. Popes and other ecclesiastical dignitaries have before now shown that they cannot be dragged into submission. Neither do the Grand Muftis fear red coated soldiers. Moreover, they fear the wrath of the foreign press even less than they fear red coats."

The action of the Grand Mufti of Egypt in virtually legalizing the murder



An example of Koranic justice in Turkey.

of Christians by Moslems and the horror manifested by the Turkish Minister of Justice at the bare idea of putting Christian and Jew on the same footing as the Moslem in the eyes of Ottoman law—as mentioned above—constitute a convincing argument against the relinquishment by the United States of any of the ex-territorial rights which it enjoys in the Sultan's dominions, and against any compliance with the demands of the Porte for the repeal of the capitulations.

The word capitulations stands in this instance for a treaty. In olden days agreements of this kind were always drawn up in Latin and the various clauses and articles thereof were prefaced by the Latin word "capitula." In course of time the agreements themselves grew to be described as capitula and then as capitulations, and we find the treaty of marriage between Dom Pedro of Portugal and Princess Marie of Savoy described as a capitulation and also those conventions of the Helvetic republic with the Netherlands, Spain, the two Sicilies, France and the Papal States for the employment of Swiss troops, especially bodyguards, by the rulers of those countries.

Finally capitulations came to be the word employed to designate the treaties by means of which the Turkish Sultans and other monarchs of the Levant, as well as the still more remote Orient, undertook to grant to foreigners in their dominions ex-territorial privileges in the form of immunity from the jurisdiction of native tribunals and the right of trial by their own diplomatic and consular representatives.

In conclusion it may be mentioned that there are thousands upon thousands of Greeks who have transferred their allegiance from their native land to the Porte, in the vain idea of facilitating thereby their financial and commercial operations. Those Greek families who were settled in Turkey prior to the independence of Greece

have also surrendered their rights of trial by their own clergy to the Ottoman authorities, with the object of cancelling the latter. Yet they are subjected to all sorts of persecution, annoyances and indignities on the part of the Turkish officials. Known by the generic name of Rayahs, that is to say non-Moslem subjects of the Sultan, they are despised by the followers of the Prophet to such an extent that until the inauguration of the present constitution they were not considered worthy of being allowed to serve in the imperial army, having to pay a heavy personal tax in lieu thereof.

Foreigners, on the other hand, who are known to be under the protection of their own government and to have retained their citizenship as well as the enjoyment of their ex-territorial prerogatives, are able to transact their business with a far greater degree of security and also of prestige in Turkey than if left to the mercy of the Ottoman authorities. Turks entertain a considerable amount of respect for the foreigner whose person and whose interests are safeguarded by his own government through the capitulations, whereas they have nothing but contempt for the foreigner who has voluntarily submitted to the jurisdiction of the wholly Oriental tribunals of the Sultan.

AMERICAN REFUGEE IN LONDON.

"I WOULDN'T go through it all again," said Joseph K. Nye, the oil manufacturer of New Bedford, Mass., who was one of the American refugees who arrived on the steamship Baltic last week. "But," he continued earnestly, "I wouldn't take \$10,000 for the experience, now I have had it."

"The conditions in London were simply incredible. In the twinkling of an eye there was no money. For a week London was panicstricken. You couldn't buy a drink or a cigar unless you had the correct change. Five pound notes were not current because no one would give change for them. They said they couldn't. The Bank of England after closing its doors for days issued one pound notes for the first time in history, but ceased the issue when the first scare was over."

"It seemed as if there was no noise but the marching of armed men night and day. No bands, no music, just the tramp, tramp of many feet."

"And the struggle to get away was indescribable. A thousand of us engaged passage on the Caledonia, paying our fare and going aboard. Two hours before sailing time the Government took the ship and we were all dumped on shore. Many were penniless, having used their last funds for passage money which they will probably get back some time."

"Then 2,500 of us got aboard the Baltic, which ordinarily carries half that number. I was glad, as many men and women were, to get a place in the steerage. The captain and crew did all they could for us, but the discomforts at first were almost unbearable. I have seen ladies wearing diamonds eating oatmeal with a little sugar in the steerage and crying into the bowl. They could get nothing else to eat excepting kippered herring boiled, as it seemed, in bilge water, or a hard boiled egg."

"I had secured a little cash, though I had trouble in getting it, for checks and drafts were useless and my experience with the cable would have been amusing if it had not been exasperating."

"When war broke out I fled a message to my business manager to buy all the Russian oil in the market at

PROF. MUENSTERBERG TELLS OF THE VALUE OF WAR

Believes It Can Become Creator of Better Form of Life and Points Out How Necessity of War May Be Prevented in Future

That war has its own value and morals is one of the striking points brought out by Prof. Hugo Muensterberg in his new book, "The War and America," which will be published this week by D. Appleton & Co., and which is frankly an expression of the German view. Prof. Muensterberg also believes that future wars may be prevented, though not by arbitration treaties and similar means. Extracts from this portion of his book are given below.

By PROF. HUGO MUENSTERBERG.

WAR is not simply a disruption of the international peace, but can become a positive creator of better and higher forms of the life of mankind. First of all only war can adjust the power of countries to the changing stages of their inner development.

It is easily said, and the average American likes to say it, that nations ought to respect the possessions of other nations as individuals respect the private property of their neighbors. But this apparently highest morality would be the grossest immorality. The property of a nation can grow through its industry; there is unlimited supply; he does not need to take anything by force from his lazier or less intelligent competitor.

But if war were abolished the peoples which have poor land to-day must remain poor through the centuries; however much they may progress internally they would have no right to expand, as they would do so at the expense of their neighbors. The peoples which are on rich land could be sure to retain their possessions even if they became unworthy and useless for the march of civilization.

The world's progress has depended at all times upon the expansive ascendancy of the sound, strong, solid and able nations and the shrinking of those which have lost their healthy qualities and have become unfit or decadent. Why is one particular stage of this international development, the chance distribution of power to-day or to-morrow, more worthy of legal conservation than any previous?

Once the sun never sank on the world empire of Spain. Would it have been better if no enemies could have dismembered it, when it began to hinder the advance of mankind? Was it not ridiculous when Spain's ill treated possessions under its protection?

Where are the vast realms of Portugal, of Holland, of Turkey to-day? Was it wrong that the American colonies disturbed the legal status of England's

possessions? The laws of the equity courts applied to nations must settle progress, must forcibly assure the permanency of any chance monopoly, of any inherited domain for which the cultural inner right may have long ago been lost.

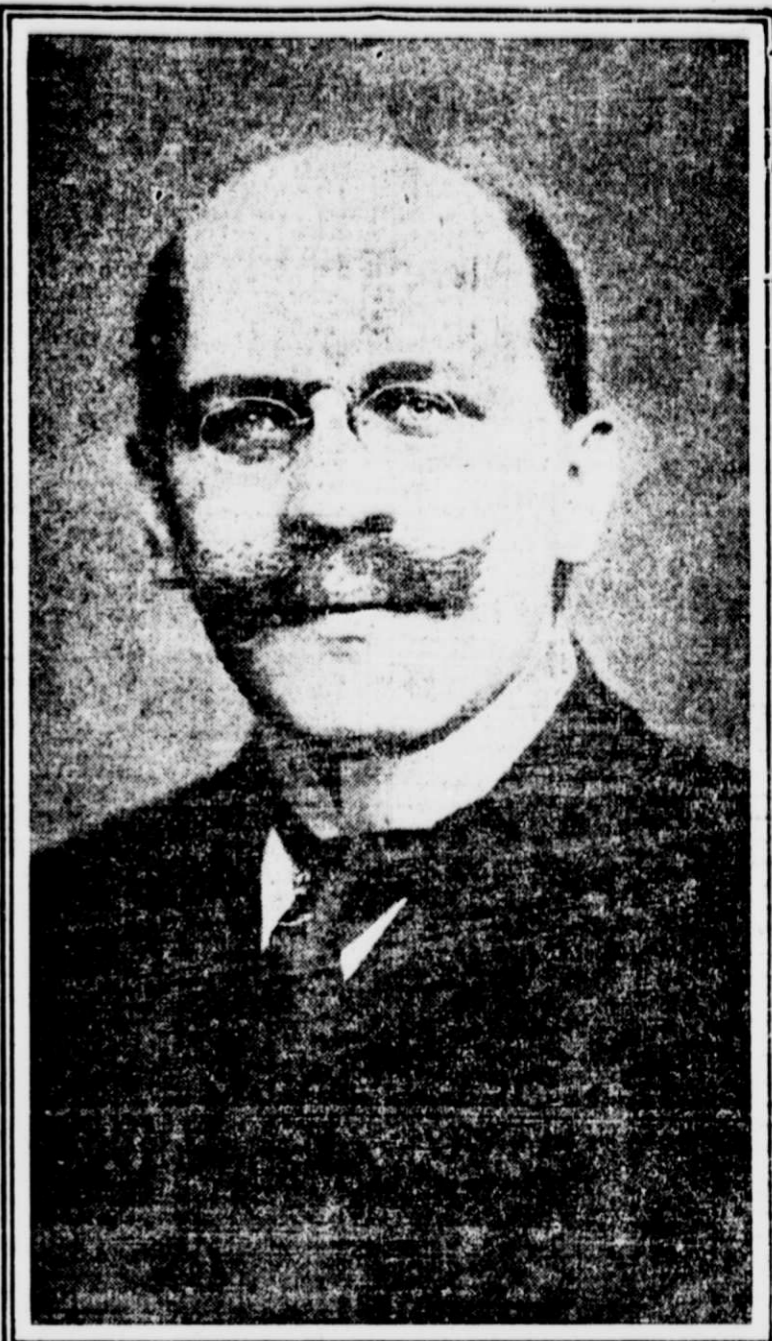
When Prussia was defeated by Napoleon in 1806 it really had failed to preserve the sterling qualities which secured the victories of Frederick the Great. The old "spirit of duty and thoroughness had yielded for a generation to flabbiness and fevolity. Prussia deserved the humiliation and the losses which sobered it again and stirred it up to a new moral rise.

If every nation's boundaries were guaranteed by a world court mankind would necessarily sink. A new adjustment to the inner growth or decay must set in from time to time. Spanish misrule in Cuba, Turkish misrule in the Balkans, had to stop. It may be that it is time to stop Russian misrule in Poland.

But often it would be unfair to speak of national wrong. It may be that both rivals are morally right in their wishes but that their wishes cannot be harmonized. If two men love the same woman neither of them is wrong, and yet only one can possess her. If two nations grow there may be conflicting needs of expansion; both may need a strip of land, a harbor, an island, an outlet to the coast if they are to develop their resources.

Neither Russia nor Japan was in the wrong when their wholesome growth led them to mutual interference. No tribunal of the world can find in such cases a decision because it is no question of right. Both parties are equally on moral ground and the source of the conflict is only the scarcity of the available land in sharp contrast to the unlimited goods which the individuals covet. Then strength alone can bring a final decision.

To be sure, the sacrifice of blood may



Prof. Hugo Muensterberg.

be terrific and the thought of the carnage must make us shudder in times of peace, but the progress of the world demands a higher point of view.

Every human being must die; there is no nobler death than to give one's life for the better life of the nation, to die that the country may live a fuller embodiment of the national ideals? For the individual sudden death on the battlefield in the overwhelming excitement is much less cruel than the agonies which millions of deathbeds bring in peaceful homes. And we ought not to forget the solemn words of President Wilson, who, before the collars of the victims of Vera Cruz, said in deep emotion:

"I never was under fire, but I fancy that there are some things just as hard. I fancy that it is just as hard to do your duty when men are sneering at you as when they are shooting at you."

But the sacrifices which the nation brings in war must anyhow not be viewed with reference to individuals. If a nation is victorious—and the hope of victory is of course the only motive which makes war possible—the nation may gain ten lives for every one which it spends.

The American colonies spilled costly blood, but if those lives had not been given the present territory of the United States would be settled by twenty instead of a hundred millions. If the German States had not sacrificed hundreds of thousands of lives Germany would never have reached that strength and wealth and through them that industrial and scientific, technical and hygienic progress which meant life and happiness for millions on millions who would have remained unborn or would have died in childhood.

The imagination of mankind is too easily impressed by sudden dramatic events, compared with the slow working of destructive forces. If the Titanic sinks the globe is agitated, but if a ten times larger number of human beings is destroyed by avoidable accidents through carelessness in the structure and service of the railways it is hardly noticed.

If a state is undisturbed peace remains on a low level of hygiene and science, has poor labor legislation, does not protect the women and children, has a high criminal record, indulges in alcohol, is scourged by venereal diseases and infected by the small family, the less and the maiming of human beings is a hundred times larger than that which may come on the battlefield. A victorious war may bring to such a nation a complete regeneration: the moral energies awake; vice is repressed; life is protected; education flourishes; hygiene spreads; science rebuilds the land; prosperity grows; temperance and self-discipline prevail; family life can expand in the new abundance; for every boy who dies a score of men and women in the next generation will find the means of health and happiness. Nobody dies at Thermopylae without giving life to hundreds.

A gigantic destruction of human life such as this war demands must naturally force on every one the wish for a substitute which is less technical and imagination. But any schemes which renounce those higher gifts of war that serve the historic progress of mankind are utterly unfit and would never be of lasting value.

It might not be difficult to construct plans which conserve the chance distribution of national possessions to-day still more firmly than any new treaty and arbitration schemes. But wherever the aim is simply to guarantee the present national boundaries without means to change them in constant adjustment to new inner needs the plan is condemned by the tribunal of historic morality.

I for my part see only one feasible possibility. War making could be overthrown only if the fundamental condition of wars were artificially changed, and this would not be utterly beyond man's power.

Almost all the wars between nations have been struggles to gain territory, or at least to deprive other nations of their territory. International wars would disappear if nations did not own

their countries. The idea of such a state of mankind would be entirely parallel to that of socialism for individuals in the State.

The socialistic plan abolishes the economic struggle of the individuals by eliminating capitalism. This world plan for the nations would abolish the struggle of war by eliminating territorialism. The territory on the globe would be distributed so that any one million beings would receive an equal share.

Of course, it would not be equality of size, but of value. The territory of Turkey even to-day is larger than that of France, Germany, England and Italy taken together. The equal distribution would therefore involve very different areas. But fundamentally any one million persons would have equal chances, and as with the growth of decay of the population and with the development of the territory new distributions would always be arranged, no one would have any interest in fighting. No nation would possess land any more than the socialistic individual would possess capital.

This seems to me the only possible solution of the problem which would not stifle the progress of mankind. As long as nations have possessions of land there will be constant need of new adjustment, which no human court, but only war can regulate. The anti-territorialism would bring to the nations all the blessings which are hoped for in anticipation for the individuals.

There would be no poor and no economic misery if socialism were carried through; there would be no militarism and no war, if cosmopolitan were the scheme of the world. The word cosmopolitan is formed from the Greek kosmos, the land. A cosmopolitan order of mankind would be one in which the State loses its individuality; in the cosmopolitan order the nations would retain their state forms, but their land would belong to the whole world.

I do think that the transition to socialism is possible, not even if it is extremely difficult in our present days. I think that an equal distribution of land for all the peoples on earth without any one people having a right to possession of land would be equally possible. Cosmopolitanism might be carried out even without externally changing much in the present status. But it would correct all the most important and thousand times more disastrous disadvantages of the socialistic system.

Most men are still convinced that the evils of capitalism are less than those which a socialistic order would involve. The stimulus which the possession of private and inheritable property has given to the world ought not to be dispensed with. The progress of mankind in the same way needs the possibility of private land possession by the individual nations; it needs the rivalry, and I believe that such an anti-territorial plan ought ultimately to be defeated for the same reasons for which the majority of the civilized nations still opposes the realization of the anti-capitalistic plan.

But this is certain. As long as private possession of land by the nations is sanctioned, there will be changes in the size of the territories, and these changes must be secured by force competition.

Of course it may happen that the industrious, intelligent merchant has had luck and remains poor while his less worthy rival grows rich by accident or trickery. No unfeeling justice lies in the decision of the court books. Yet in the whole economic system is backed by the belief that free competition brings gain to the worthy and keeps down the less efficient.

In this sense certainly no unfeeling justice lies in the decision of the weapons. But in the great averages history has proved that those nations which rise which are worthy of it and those which fall which deserve punishment from the highest point of view of civilization. Success or failure is war may come to nations without any reference to certain outwardly visible factors of national culture. Prussia was beaten by Germany at a time when it was superior to its opponent in the art of painting. But on the whole the empire of the Third Napoleon deserved its crumble.